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Consideration of reports of States parties

List of issues in relation to the report submitted by the Holy See under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Addendum

Replies of the Holy See to the list of issues*

[30 December 2013]

* The present document is being issued without formal editing.

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** The annexes can be consulted in the files of the secretariat.

Introduction

1. The Holy See welcomes this opportunity to respond to the requests of the Committee on the Rights of the Child for "further information relevant to the implementation of the...Protocol" (art. 12.3). These questions, in the form of a list of issues, are in response to the Holy See's initial report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

2. The object and purpose of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography is set out in its preamble: "Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography."

3. Placing the important dialogue between the Committee and the Holy See into context, the Holy See wishes to stress that, on 20 April 1990, it acceded to the Convention on the Rights of Child, on its own behalf and that of the Vatican City State with three reservations and on 24 October 2001, it ratified both the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

4. As noted above, the Committee's requests for further information regard the initial report of the Holy See on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which is divided into six parts:

(a) Part I gives a brief introduction; in particular, the Holy See notes that it takes into consideration the Committee's guidelines for State reports as far as it is possible given the nature of the Holy See. Part II discusses the Holy See as a subject of international law and lays out the distinction between the Holy See and the Vatican City State. Part III reiterates the Holy See's three reservations and declaration to the Committee. Part IV discusses the contributions of the Holy See in affirming the rights of the child through its speeches and addresses directed to all persons of good will, believers and non-believers alike. For example it gives an overview of the seven general principles regarding the rights of the child within the context of the family. In addition, it addresses the key themes raised in the Optional Protocol: (a) prohibition of the sale of children, of child prostitution and child pornography; (b) criminalization of these offences and others defined in the Protocol; (c) taking measures to establish jurisdiction over offences for the purpose of investigation and prosecution of the crimes or extradition of the accused; (d) protection of child victims during the criminal justice process; (e) prevention of these offences against children with a particular attention to the root causes; (f)international juridical cooperation assistance. Part V discusses the activities in promoting basic principles and the rights of the child on the international level. Finally, part VI addresses the affirmation of the rights of the child in the mission of the Holy See.

(b) Part V of the report contains various examples pertaining to local Catholic churches and institutions operating in the territories of other States. Such initiatives are offered as best practices inspired by the principles and teachings of the Holy See. However, an important caveat is made before the Holy See mentions such activities: the Holy See encourages and promotes activities carried out by the local Catholic churches and

institutions according to their own status in canon law, and in compliance with the laws of the respective States in which they operate (see e.g., paras. 41 and 25).

5. Despite the Holy See's qualification in paragraph 4 (b) above, the queries reveal that the Committee considers the bishops and major superiors of religious institutes as representatives or delegates of the Roman Pontiff which is a misunderstanding of Church governance and structure (Holy See's response to the Irish Government's views on the Cloyne report, 3 September 2011).

6. The Holy See is not unmindful of the complexity of its nature as a sovereign subject of international law. Therefore, in an effort to enhance the dialogue with the Committee, the Holy See would like to address some preliminary issues, which seem to be at the heart of the conversation: (a) the international personality of the Holy See, including distinctions between the Holy See and the Vatican City State, on the one hand, and the Holy See and the Catholic Church, on the other hand; (b) the nature of canon penal law and how it differs from State criminal laws; and (c) the notion of State sovereignty and the application and implementation of the Optional Protocol.

7. **The international personality of the Holy See**. The Holy See is a sovereign subject of international law having an original, non-derived legal personality independent of any territorial authority or jurisdiction. The Holy See intended as the Roman Pontiff, in the narrow sense, and the Roman Pontiff with his dicasteries (especially the Secretariat of State) in the broader sense, has diplomatic relations with 180 States and participates as a Member and/or Permanent Observer to the United Nations and several specialized agencies of the United Nations system, as well as in various universal or regional intergovernmental organizations. As it declared in 1990, in acceding to the Convention, the "Holy See intends to give renewed expression to its constant concern for the well-being of children and families. In consideration of its singular nature and position, the Holy See, in acceding to this Convention, does not intend to prescind in any way from its specific mission which is of a religious and moral character."

8. **The Holy See and the Vatican City State**. The Holy See is related but separate and distinct from the territory of the Vatican City State, over which the Holy See exercises sovereignty, and the international personality of the Holy See has never been confused with the territories over which it has exercised State sovereignty. The Vatican City State was established in 1929 to more effectively promote the spiritual and moral mission of the Holy See. Therefore, colloquial references to the Holy See as the "Vatican" are imprecise. The Holy See globally encourages basic principles and authentic human rights recognized in the Convention, while it implements treaties within the territory of the Vatican City State, pursuant to any reservations of the Holy See, for example, that entered under the Convention that any application must be "compatible in practice with the particular nature of the Vatican City State and of the sources of its objective law (art. 1, Law of 7 June 1929, n. 11) and, in consideration of its limited extent, with its legislation in the matters of citizenship, access and residence."

9. **The Holy See and the Catholic Church**. The Holy See is related but separate and distinct from the Catholic Church, which is also a non-territorial entity, which may be defined as a spiritual community of faith, hope and charity constituted as a visible society founded on the communion of faith, sacraments, discipline. Its structure is regulated by its internal legal system. The Church portrayed as a communion refers to the mutual relationships that interact between the particular and the universal Church with respect for the principles of collegiality and primacy and the duties and rights in canon law of all members of Christ's faithful. Canon law preserves the right ordering of this society that is a hierarchically structured service of divinely entrusted functions of a sacred and administrative nature in specific regard to the sacraments (Pope John Paul II, Ap. Const. *Sacrae disciplinae leges*, 25 January 1983). Consequently, when the Holy See accedes to or

ratifies a treaty, it does not do so on behalf of every Catholic in the world. Each member of the Catholic Church is subject to the laws of the respective State in which he or she lives, including all domestic laws, and the international obligations deriving from international agreements which have been introduced into national law.

10. **The Distinction between canon penal law and state criminal laws**. It is worth repeating the following distinctions that were included in the Holy See's combined second, third and fourth reports (para. 98), which was filed subsequently to the initial report of the Holy See on the Optional Protocol. State criminal laws greatly differ from canon penal law; the latter is not intended to usurp or otherwise interfere with State jurisdiction (criminal or civil). Canon law is an original or non-derived system that regards those belonging to the Catholic Church. It addresses violations of public order in the Church and therefore, briefly treats the subject matter of certain ecclesiastical delicts (e.g. homicide, rape, aggression and sexual abuse). These particular offences rightly trigger sanctions by the State since the public order of civil society has been disturbed, and the State's concurrent legislative jurisdiction is acknowledged by canon penal law (can.1344 (2), CIC). Ecclesiastical delicts predominantly concern the unity and functioning of the Church and the administration of sacraments. Consequently, some delicts are of little or no relevance to the State, while a few are also important to the State. However, canon law does not attempt to deal with any ecclesiastical delict in an exhaustive manner, nor treat many more crimes that are generally punishable by the State. In addition, the canon penal law system does not provide for physical force in order to carry out the punishment of delicts and there are no prisons or other such places.

11. **State sovereignty and the application and implementation of the Optional Protocol**. The principle of the "sovereign equality" of States is the fundamental constitutional norm of the law of nations (see e.g., Art. 2.1, of the Charter of the United Nations).

(a) The term "sovereignty" is usually employed to refer to the general legal competence of a State or some element of the same and thus, the term "jurisdiction" which includes legislative, administrative and judicial competence over a national territory, may be articulated in terms of sovereignty or sovereign rights. Jurisdiction, on the other hand, is merely one aspect of sovereignty; other key elements, for example, are the capacity to enter into diplomatic relations with other States, and to conclude international agreements. The basic principle of the sovereign equality of all States, may in turn, be described as having, at least, two important corollaries: the duty of non-intervention in the area of exclusive territorial or domestic jurisdiction of other States (see e.g., Art. 2 (7). Charter of the United Nations) and the fact that State obligations in treaty law are based on consent (see e.g., preamble para. 3, 1969 Vienna Convention on the Law of Treaties;

(b) As a general rule, a treaty is applied within the territory of a State party and from the moment it is in force for the State party (Vienna Convention, arts. 28 and 29). In specific regard to the Optional Protocol, the same rules apply based on "a good faith" reading of the text, "in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of the object and purpose of the treaty" (Vienna Convention, art. 31; see also art. 32);

(c) As previously mentioned, the preamble of the Optional Protocol emphasizes that the treaty seeks to "achieve the purposes of the Convention on the Rights of the Child and the implementation of [certain] provisions" (see discussion below). The Convention, in turn, is applied in "the country concerned" (art. 44.2); the relevant territory of the State party (arts. 10.2, 44.6, 7.2, 20.2, 22.1) and with the involvement of the competent national authorities (arts. 3.1, 3.2, 3.3, 4, 9, 10, 12.2 13.2, 14.3, 15.2, 18.2, 19.2, 20.3, 21.2, 22.2, 25, 40). In its preamble, the Optional Protocol refers to the following provisions of the Convention: definition of the child (art. 1); illicit transfer and non-return of children abroad

(art. 11); adoption (art. 21); economic exploitation (art. 32); illicit use of narcotic drugs and psychotropic substances (art. 33); sexual exploitation and sexual abuse, including unlawful sexual activity, prostitution and pornography (art. 34); abduction of, the sale of or traffic in children for any purpose or in any form (art. 35); and all other forms of exploitation (art. 36);

(d) In the substantive articles, the Optional Protocol obliges States parties to criminalize, investigate, prosecute and punish those crimes against children set out in articles 2 and 3, including the sale of children for the purposes of sexual exploitation, organ transfer, forced labour and certain adoptions involving improperly induced consent and offences relating to child prostitution and child pornography. Consequently, much of the subject is contingent on State legislative, judicial and policy measures. The universally recognized principle that States have jurisdiction over criminal offences when they are committed in their territory is reaffirmed in article 4 (1) of the Optional Protocol: "*Each* State Party shall take such measures as may be necessary to establish jurisdiction over the offences…committed in its territory". However, article 4 (2) suggests that States parties adopt the principle of extraterritoriality to extend their jurisdiction in cases when the alleged offender and/or victim is a national: "Each State Party may take measures as may be necessary to establish jurisdiction over the offences…when the alleged offender is a national of that State or person who has his habitual residence in its territory; [or] when the victim is a national of that State." Finally, the Optional Protocol "does not exclude any criminal jurisdiction exercised in accordance with internal law" (art. 4);

(e) As previously noted, the Holy See exercises sovereignty over the Vatican City State and in this regard the competent judicial authorities of the Vatican City State exercise penal jurisdiction over crimes and accordingly, international obligations under the Optional Protocol, have been recently transformed into laws of the Vatican City State: *Law No. VIII containing Complementary Norms on Criminal Law Matters*; and *Law No. IX, containing Amendments to the Criminal Code and the Criminal Procedure Code.* These laws apply when such crimes are (a) committed by persons deemed "public officials" (e.g. persons working within the Roman Curia and related institutions as well as diplomatic personnel in missions around the world); or (b) committed by the same in the exercise of their functions; and (c) if the perpetrator is physically present in the territory of the Vatican City State and has not been extradited. Pursuant to the Lateran Pact, the Holy See may request Italy to allow those convicted by the Tribunals of the Vatican City State to serve their sentences in an Italian penitentiary.

12. The Holy See now turns to the specific list of issues. In order to enhance the dialogue with the Committee, the Holy See clarifies the following terms. It will use the word "implementation" in reference to application of the Optional Protocol within a specific territory and emphasizes that the Holy See implements the Optional Protocol within the Vatican City State. It notes that the Committee has limited one question to the Vatican City State, the territory over which the Holy See exercises sovereignty (question 7); therefore, the Holy See has added relevant information regarding implementation of the Optional Protocol in the Vatican City State under this question. In this regard and in addition to the written replies to this query, a copy of the recent amendments to the penal laws of the Vatican City State is provided in the form of an annex (see attachment I). The Committee's remaining queries are directed to the Holy See, as a sovereign subject of international law, and in this respect the Holy See will continue to use the terms "encourage" or "promote" to describe what it does internationally to form the consciences of Catholics and all persons of good will. In this latter regard, the Holy See's aim is: (a) to sustain the role of international law, as a precondition of world stability; (b) to urge everyone to respect, in their personal and professional conduct, the basic principles and authentic human rights recognized in the Convention; and (c) to support an authentic

interpretation of the Convention and the Optional Protocol for full implementation by States parties.

Question 1

Please provide statistical data (disaggregated by sex, age, socioeconomic background, ethnic group and urban and rural residence) for 2010, 2011 and 2012 on:

(a) Reports of sale of children (disaggregated by the purpose of the sale) child prostitution and child pornography, together with information on the action taken in response to these reports, in particular prosecutions brought against members of the clergy and penalties imposed;

(b) The number of child victims provided with recovery assistance and having received compensation in accordance with article 9, paragraphs 3 and 4, of the Optional Protocol.

13. The Holy See does not keep such statistics. Any decision to keep them rests with the State where the prosecutions have been conducted. As explained in the Introduction, the implementation of the Optional Protocol is generally applied within the territories of States parties and during the time period in which the treaty is in force for the same. Moreover, it is noteworthy that each Catholic, including every cleric, has a duty to comply with State laws.

14. Neither the Optional Protocol, nor the Committee's reporting guidelines recommend that States parties provide statistics on the religious affiliation of convicted persons per se, or clerics in particular. For example, no provision in the Optional Protocol, including articles 9 (3) and 9 (4), require States parties to provide data on reports of sale of children, in particular prosecutions and penalties, nor the number of child victims provided with recovery assistance and compensation. However, the Committee suggests that States parties provide data on a variety of issues in its non-binding guidelines for initial reports on the Optional Protocol (CRC/C/OPSC/2). These guidelines in section II request statistics on "any available data concerning the number of prosecutions and convictions for such offences, disaggregated by nature of offence (sale of children, child prostitution or child pornography)." Other sections seek figures on related questions such as: "incidence of sale of children" or "the number of children adopted through the efforts of intermediaries" or "the number of child victims of trafficking" and so forth.

Question 2

Please indicate whether the State party has started developing a centralized data collection system for all cases of sale of children, child prostitution and child pornography and whether a system of information sharing has been established with the judicial authorities of states where offences under the Optional Protocol took place.

15. As noted in written reply 1.1, the Holy See does not keep such statistics. Any decision to keep them rests with the State where the prosecutions have been conducted.

16. The Optional Protocol does not oblige States parties to create a centralized data collection system for all cases of sale of children, child prostitution and child pornography, although such an idea might be viewed as a good practice for better information sharing between States parties.

Question 3

Please indicate whether specialized training has been provided to all religious personnel and civilians working in catholic institutions who are likely to come into contact with child victims of the offences covered in the Optional Protocol in the course of their functions.

17. While stressing that the religious affiliation of those who work with children is not specified in the Optional Protocol, the Holy See underlines that it promotes the protection of children and young persons through the development of safe environments for them as well as public awareness programmes. Such activities are to include the formation and education of parents, together with the screening, training and formation of clerics, religious and lay persons, engaged in pastoral work for Catholic institutions and programmes. (Congregation for the Doctrine of the Faith, *Circular Letter to Assist Episcopal Conferences in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics*, 3 May 2011).

18. Moreover, continuing decisively along the lines undertaken by Pope John Paul II and Pope Benedict XVI, on 5 December 2013, Pope Francis decided to establish a pastoral Commission for the Protection of Minors, with the aim of proposing new initiatives for the development of safe environment programmes for children and improving efforts for the pastoral care for victims of abuse around the world.

19. It is worth repeating that bishops and major superiors of religious institutes do not act as representatives or delegates of the Roman Pontiff. Every Catholic in the world must comply with civil laws. Consequently, the daily training of religious personnel as well as others, who work at the local level in Catholic institutions, is carried out by the latter according to their own status in canon law, and in compliance with the laws of the respective States in which they operate.

20. It is worth noting that the term "training" appears in the Optional Protocol in two different contexts. Article 8 is devoted to protection of child victims at all stages of the criminal justice system. In particular, article 8.4 provides that: "States Parties shall take measures to ensure "appropriate training, in particular legal and psychological training, for persons who work with victims of the offences". Article 9.2, on the other hand, deals with the issue of prevention and obliges State parties to raise "awareness in the public at large, including children…about the preventive measures and harmful effects of the offences" through "all appropriate means, education and training".

Question 4

Please provide information on the human, financial and technical resources allocated for the implementation of the Optional Protocol.

21. There is no specific allocation by the Holy See for its promotional activities of the Optional Protocol at the international level.

22. Article 10.4 of the Optional Protocol devoted to international cooperation provides that "States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes." The Holy See assumes that the Committee's question is in relation to this article.

Question 5

Please indicate which mechanism has been established for children to address complaints if they become victims of offences under the Optional Protocol.

23. The Holy See adopts written replies in paragraphs 17 and 18 above, as well as written replies in 42 (a) and (b) below. As previously mentioned, the Congregation for the Doctrine of the Faith issued guidelines to episcopal conferences located around the world to assist bishops and major superiors who have the primary responsibility for protecting children. The guidelines urge the bishop or his delegate to listen to the victims and their families. In addition, they recommend the protection of minors through the development of "safe environment" programmes for children. Such programmes are to seek to help parents as well as those engaged in pastoral work and schools to recognize the signs of abuse and to take appropriate measures, for example, specific policies and procedures for receiving allegations of sexual abuse, including those from children, and for responding to them. "The programmes have often been seen as models in the commitment to eliminate cases of sexual cases of minors in society today." (Congregation for the Doctrine of the Faith, *Circular Letter to Assist Episcopal Conferences in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics*, 3 May 2011).

24. The Optional Protocol does not require States parties to create specific mechanisms for children to make complaints. Article 8.1 provides that "States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process" and gives specific examples of such measures. Presumably, under this section, States parties might consider whether complaint mechanisms currently established by child protection or law enforcement authorities should be rendered more child-friendly.

Question 6

Please indicate the measures in place to prevent children who are particularly vulnerable to becoming victims of the offences under the Optional Protocol, especially child victims of sexual abuse and domestic violence, children living in poverty, children affected by migration, and children living in institutions and/or who have run away from care institutions.

25. The Holy See appreciates that the Optional Protocol refers to children as "vulnerable" in various provisions. States are obliged to give "[p]articular "attention" to protect children, who are especially vulnerable", in law and policy (art. 9.1); and cooperate internationally to eliminate the "root causes" that are "contributing to the vulnerability of children" (e.g. poverty and underdevelopment). Moreover, in terms of the contributing factors, preamble paragraph 7 adopts "a holistic approach", including poverty, dysfunctioning families, lack of education, urban-rural migration, irresponsible adult sexual behaviour and trafficking in children.

26. The Holy See directs attention to paragraph 12 of its report: "The Holy See views education of children within the family as an indispensable part of confronting the "root causes" of the problems treated in the Optional Protocol (art. 10 (3)). To this end, the Holy See promotes activities that protect and strengthen the family and supports parents in education of their children in values that are founded on a true understanding of the human person. Authentic love and peace, for example, must be built up on a daily basis and in order to prevent conflict, violence, and exploitation, they must take deep root within the heart of every human person. In this way, such education is most likely to have a lasting effect and influence, not only on immediate family members, but also on the greater

community (e.g. other families, intermediate groups and political communities, both domestic and international)."

27. The Holy See also underlines paragraph 16 of its report: "With respect to art. 10 of the OPSC, the Holy See adopts an integral approach by employing its moral leadership worldwide to address contributing factors including underdevelopment, poverty, economic disparities, people on the move (e.g. migrants and refugees), and family breakdown. The Holy See also promotes the growth of children and parents in authentic human love, and provides education on the harmful nature of pornography and of violence, and the proper use of modern technology."

28. The Holy See emphasizes the explicit measures to promote globally authentic human love set out in paragraphs 17–22 of its report, which give a brief summary of the following publications of its dicasteries: Pontifical Council for the Family, *The Truth and Meaning of Human Sexuality* (1995); Congregation for Catholic Education, *Educational Guidance in Human Love* (1983); Pontifical Council for Social Communications, *Pornography and Violence in the Communications Media: A Pastoral Response* (1989); Pontifical Council for Social Communications, *Ethics in the Internet* (2002); and Pontifical Council for Social Communications, *The Church and the Internet* (2002).

29. In specific regard to children on the move, including children affected by migration, the following guidelines developed by the Pontifical Council for the Pastoral Care of Migrants and Itinerant People are relevant, namely: *Guidelines for the Pastoral Care of the Road/Street* (2007); *Guidelines for the Pastoral Care of Gypsies* (2006); *and the Instruction "Erga migrantes caritas Christi" (The love of Christ towards migrants)* (2004).

30. Another publication regards drug addiction and includes a discussion of its effects on children: Pontifical Council for Health Care Workers, *Church: Drugs and Drug Addiction* (2001).

Question 7

With reference to paragraphs 13, 15, 60 and 61 of the State party's report, please clarify if all forms of sale of children, covered in article 2 (a) and article 3, paragraph 1 (a) (i), (b) and (c) of the Optional Protocol, child prostitution and child pornography have explicitly been defined and criminalized. Please also indicate if the attempt to commit, being an accomplice to, and participation in any of these crimes have been criminalized.

31. To put the written replies into context, this paragraph will reproduce paragraphs 13, 15, 60 and 61 of the report of the Holy See on the Optional Protocol.

(a) In specific regard to paragraphs 13, 14 and 15 of the report on the Optional Protocol, they are contained in part I entitled "Affirmation of the rights of the child in the [speeches, addresses] of the Holy See relating to the [OPSC]", under the subsection "Prohibition". These paragraphs, in turn, state the following: "As regards arts. 1, 2, and 3 of OPSC, the Holy See condemns the sale of children, child prostitution, child pornography, as well as illicit organ transfer, forced labour, and child exploitation [para. 13]. Following Catholic doctrine the Holy See views these acts as moral offences against the divine law as revealed in the Decalogue. (see catechism of the Catholic Church, arts. 2414, 2355, 2354, 2296) [para. 14]. Such acts also violate basic principles that are knowable through right reason. These acts are properly treated as criminal acts and punished according to the laws of the State. The sale of children and sexual exploitation of children through prostitution and pornography are recognized as contemporary forms of slavery that degrade the human person and create victims of the most vulnerable [No. 15]";

(b) Paragraphs 60 and 61 of the report on the Optional Protocol are found under part VI of the Vatican City State: "To date there are no specific penal laws enacted for

VCS that criminalize the sale of children, child prostitution and child pornography as defined in the OPSC. However, analogous offences are punished under the supplementary laws of Italy in accordance with the ICPL and ICPP. The key offences are slavery (ICPL, art. 145), inducement of a minor into prostitution or otherwise corrupting the minor (ICPL, art. 345 (1)), and distribution or exposition of obscene materials (ICPL, art. 339). [para. 60] VCS has no penitentiary system but under art. 22 of the Lateran Pact may request Italy to punish the offences committed within VCS. It does not seek extradition of persons for the purposes of prosecution due to its unique nature, and extradites persons to the Italian authorities according to art. 22 of the Lateran Pact based on the double criminality rule." [para. 61] Paragraph 63 also notes that at the time the Holy See submitted its report in 2010, a special commission had been established to study the penal laws of the Vatican City State.

32. In response to the question, there has never been a case or crime reported to the criminal justice authorities in the Vatican City State (e.g. gendarmes, judges) under the aforementioned penal laws described in the report on the Optional Protocol, as reproduced above. A special commission was established to amend the penal laws to bring them into conformity with the Holy See's obligations under Optional Protocol and this work was completed after the submission of the report on the Optional Protocol to the Committee. At present, the Holy See is delighted to say that the Optional Protocol has been implemented in the Vatican City State with the *Motu Proprio* of Pope Francis, Apostolic Letter "*On the Jurisdiction of Judicial Authorities of Vatican City State in Criminal Matters*." With this *motu proprio*, two new sets of laws are promulgated which transform the international obligations of the Holy See and of the Vatican City State on penal matters into binding domestic law of the Vatican City State. These laws have been in force since 1 September 2013. To date, no case or crime has been reported under the recently amended penal laws, described below:

(a) The offences against a child, who is defined as anyone under 18 years of age, have been criminalized in the Vatican City State pursuant to the Holy See's international obligation to penalize offences against children under article 3, and in accordance with the definitions of the crimes in article 2, of the Optional Protocol, namely sale of children, child prostitution and child pornography. It is worth remembering that article 3 of the Optional Protocol includes the following offences: the sale of children for the purposes of sexual exploitation, organ transfer, forced labour and certain adoptions involving improperly induced consent and offences relating to child prostitution and child pornography;

(b) In attachment 1 the relevant definitions along with the offences and their penalties are contained in "*Law No. VIII: Complementary Norms on Penal Matters, Title II: Crimes Against Children*". This section contains the following articles: article 4 (definitions); article 5 (sale of children); article 6 (child prostitution); article 7 (sexual violence against children); article 8 (sexual acts with a minor); article 10 (child pornography); article 11 (possession of child pornography); and article 12 (enlistment of children in a delinquent or armed group). The crimes under articles 4, 5, 6 and 10 carry a term of imprisonment ranging from 6 to 12 years and a fine extending from EUR 15,000 to 150,000;

(c) In "*Title I: Crimes against the person*", article 2 renders trafficking in human persons a crime which carries a penalty ranging from 8 to 20 years' imprisonment that is increased by one third or one half if the crime is committed against a minor; or for the purpose of prostitution; or for the purpose of organ transfer. Under the same section, torture is a crime pursuant to article 3; it carries a sentence ranging from 5 to 10 years, which may be increased by aggravating circumstances: when a child is the victim; or the crime causes grave injuries, then the sentence is increased by one half;

(d) Under "*Title III: Crimes Against Humanity*" enslavement is defined as "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children". This crime carries a sentence of not less than 15 years of imprisonment.

Question 8

Please indicate whether an investigation has been conducted into the allegations of thousands of babies sold for adoption over the past decades in Spain by a network of doctors, nuns and priests, a system which was only discovered in 2011.

33. The Holy See condemns the sale of children, which is a crime and a moral offence against the divine law as revealed in the Decalogue and also violates basic principles that are knowable through right reason (see para. 31 above). Such acts are properly treated as criminal and punished according to the laws of Spain.

34. The Holy See expresses a profound sense of solidarity and concern for the children and their families. It is encouraged by the statement of the Episcopal Conference of Catholic Bishops in Spain wherein it states its willingness to fully collaborate with the civil authorities (19 November 2013). The Holy See supports and encourages the investigations by the Spanish authorities into the possible crimes committed by some members of the local Church and Catholic institutions. It also supports the statement of the Episcopal Conference emphasizing the good services of the vast majority of dedicated and generous religious and priests in Spain.

35. As previously noted, every Catholic is called to respect the moral principles as contained in the catholic doctrine and obliged to comply with civil laws. The Holy See, as a sovereign subject of international law, must respect the duty of non-intervention into the domestic affairs of other States and their legal competence to investigate, prosecute and punish crimes against children and their families committed by persons, including Catholics, found guilty of such crimes, who are working within Catholic institutions operating in their respective territories. As previously, noted, the implementation of the Optional Protocol is applied within the territories of States parties and during the time period in which the treaty is in force for the respective State party.

Question 9

Please provide information on the measures taken to avoid retaliation against child victims of pornography and against those denouncing acts of pornography. In particular, please indicate the follow up given to the findings of the Philadelphia Grand Jury which reportedly revealed that Archdiocesan officials fired a nun from her position as director of religious education after she complained about a priest who was still ministering to children despite a conviction for possession of child pornography.

36. The Holy See is deeply saddened by the disrespect shown to any person whose first instinct is to protect children and to stop the criminal acts committed by another person. Indeed the guidelines mentioned above affirm that any person who reports a delict should be treated with respect.

37. The Holy See recognizes that article 8 (1) (f) of the Optional Protocol obliges States parties "to adopt appropriate measures to protect the rights and interests of child victims" during the criminal justice process by "providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation." The Holy See, as a sovereign subject of international law, is obliged to respect the duty of non-intervention into the domestic affairs of other States and

their legal competence to investigate, prosecute and punish crimes committed against children. It is also within the competence of States parties to enact laws that protect witnesses or "whistleblowers" from retaliation. As previously mentioned, all Catholics must comply with civil laws.

38. On the international level, the Holy See has spoken on the destructive nature of "retaliation" per se on a number of occasions and in various settings. The following two examples are noteworthy:

(a) On the topic of trafficking and the plight of the victim, the Holy See stated: "But clear legal protection for victims must be assured. However, the victim's readiness to testify in court should not be the condition for affording protection. The best practice seems that of granting at least a temporary residence permit to the victim as an encouragement to cooperate with the judicial system but also as a possible opening for social integration in the host society. This becomes a moral necessity if the return home would expose the victim to retaliation." (Intervention of the Permanent Observer of the Holy See to the United Nations in Geneva, at the sixtieth session of the United Nations Commission on Human Rights, 2004);

(b) The Holy See has exhorted all to show great respect for those who report the crime of child sexual abuse to State authorities for the purpose of prosecution and punishment; and the delict of child sexual abuse to local Church authorities for the purpose of religious discipline (Congregation for the Doctrine of the Faith, *Circular Letter to Assist Episcopal Conferences in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics*, 3 May 2011).

Question 10

Please provide information on measures taken by the State party to provide assistance to victims of the offences covered by the Optional protocol. In particular provide information on measures taken to ensure the rehabilitation, reintegration and compensation of child victims of, sale of children, child prostitution and child pornography. Furthermore, please indicate what programmes are in place for the treatment of offenders of crimes covered under the Optional Protocol.

39. The Holy See acknowledges that the Optional Protocol deals with victim assistance in various contexts. States parties shall assist victims during the criminal justice process (art. 8); they must ensure "full social reintegration and their full physical and psychological recovery" (art. 9.3); and the means to seek "compensation for damages from those legally responsible" (art. 9.4). States parties "shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation" (art. 10.2). The Optional Protocol does not mention "treatment of offenders of crimes", although it is an important aspect for consideration.

40. The Holy See as a sovereign subject of international law is obliged to respect the duty of non-intervention into the domestic affairs of other States, including issues concerning access to compensation procedures and internal criminal procedures of other States concerning assistance to victims in specific regard to articles 8, 9.3 and 9.4. It has not had the occasion to cooperate directly with States parties in the assistance of child victims, although it does support such initiatives, as contemplated by article 10.2, nor does it promote a particular programme for treatment of offenders.

41. The Holy See's main vehicle to provide assistance to victims of the offences is the formation of consciences of Catholics and every person of good will on fundamental principles recognized in the Optional Protocol with a view to inspiring everyone to assist victims of these most grievous offences, in particular States parties to the Optional

Protocol. In this latter regard, it is worth referring to the goals of the Holy See as articulated in paragraph 12 above:

(a) In specific regard to the reaffirmation of the principles of international cooperation as regards the assistance of victims, the Holy See directs attention to what it states in paragraphs 16–22 23–25 of its report;

(b) Various forms of assistance are encouraged and supported by the Holy See which are given to victims of domestic abuse, sexual abuse, prostitution, trafficking and so forth by the local Church, religious congregations and Catholic associations. Such initiatives are carried out by entities in accordance with their status in canon law and in compliance with the laws of the respective States in which they operate (see e.g., in particular, paras. 40–43 and 47–54 of the report of the Holy See).

42. The Holy See also promotes those principles that lie outside the remit of canon law and are therefore relevant to the international community on topics such as victim assistance. This discussion below should be viewed as complementary to all that has been previously stated regarding the Holy See's efforts in preventing and prohibiting child sexual abuse and other forms of exploitation contained in the Holy See's combined second, third and fourth reports on the Convention on the Rights of the Child and in the initial report on the Optional Protocol.

(a) **Primary duties under the guidelines**. In 2011, the Congregation for the Doctrine of the Faith issued guidelines to the Catholic Conferences of Bishops throughout the world to aid the diocesan bishops and major superiors who have the primary obligation of assuring the protection of children and of the young and to give an appropriate response to the cases of sexual abuse of minors by clerics or religious. The guidelines were drafted to assist the correct application of the norms promulgated on 21 May 2010 by Pope Benedict XVI as a revised version of the norms promulgated by Pope John Paul II, which included norms on the sexual abuse of minors by members of the clergy;

(b) **Assistance to victims**. Victims must be listened to and their suffering acknowledged. They must be offered spiritual and psychological assistance with a view to fostering healing and to promoting reconciliation. As was noted in the introduction of this report, the Church conducts penal canon law proceedings in confidence in order to protect witnesses, the accused and the integrity of the Church process and procedures to establish the truth and promote reconciliation. As was noted in the introduction to these written replies, although the proceedings are not open to the public, this fact does not forbid or even discourage anyone from reporting the underlying allegations to the civil authorities. The Church has constantly taught the moral obligation to obey just civil laws (cf. Matt. 22:21; Rom. 13:1; Catechism of the Council of Trent, 1566; Second Vatican Council, *Gaudium et spes*, 1965; Catechism of the Catholic Church, 1987).